

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANTHONY M. BRADY,

Plaintiff,

v.

BENJAMIN ESTILL, *et al.*,

Defendants.

Case No. 3:20-cv-00265-MMD-WGC

ORDER

This is a *pro se* civil rights action filed pursuant to 42 U.S.C. § 1983 by a prisoner in the custody of the Nevada Department of Corrections. On May 4, 2021, the Court issued an order dismissing the first amended complaint with leave to amend the Fourteenth Amendment claims in Claim 1 and directing Plaintiff to file any amended complaint within 30 days of the date of that order. (ECF No. 6 at 12-13). The time for filing a second amended complaint now has expired, and Plaintiff has not filed a second amended complaint or otherwise responded to the Court's order. District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128,

1 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson*
2 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution
3 and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
9 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
10 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 Here, the Court finds that the first two factors, the public's interest in expeditiously
12 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
13 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
14 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
15 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
16 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring
17 disposition of cases on their merits—is greatly outweighed by the factors weighing in favor
18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
19 the court's order will result in dismissal satisfies the “consideration of alternatives”
20 requirement. See *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
21 F.2d at 1424. The Court's order requiring Plaintiff to file an amended complaint within 30
22 days expressly informed Brady that, if he did not timely file a second amended complaint,
23 this action would be dismissed with prejudice for failure to state a claim. (ECF No. 6 at
24 13.) Thus, Plaintiff had adequate warning that dismissal would result from his
25 noncompliance with the Court's order to file an amended complaint within 30 days.

26 It is therefore ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
27 No. 1) without having to prepay the full filing fee is granted. Plaintiff shall not be required
28 to pay an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant

1 to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act. The movant
2 herein is permitted to maintain this action to conclusion without the necessity of
3 prepayment of fees or costs or the giving of security therefor.

4 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prison
5 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
6 the account of Anthony M. Brady, # 1083645, to the Clerk of the United States District
7 Court, District of Nevada, 20% of the preceding month's deposits (in months that the
8 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The
9 Clerk of the Court will send a copy of this order to the Finance Division of the Clerk's
10 Office. The Clerk of Court will send a copy of this order to the attention of **Chief of Inmate**
11 **Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV
12 89702.

13 It is further ordered that, regardless of the success of Plaintiff's action, the full filing
14 fee is still due, pursuant to 28 U.S.C. §1915, as amended by the Prisoner Litigation
15 Reform Act.

16 It is further ordered that this action is dismissed with prejudice based on Plaintiff's
17 failure to file an amended complaint in compliance with this Court's May 4, 2021, order
18 and for failure to state a claim.

19 The Clerk of Court is further directed to enter judgment accordingly and close this
20 case.

21 DATED THIS 9th Day of June 2021.

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MIRANDA M. DU
25 CHIEF UNITED STATES DISTRICT JUDGE
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